

REMARKS

Claim 1 has been amended by incorporating the subject matter of claim 12 into it.

Accordingly, claim 12 has been deleted.

New claim 24 has been added.

The claims in this case were restricted into two Groups. Applicant has provisionally elected Group I, Claims 1-22. The Restriction Requirement is traversed.

For restriction to be proper, a burden must be placed on the Office in examining all claims. Applicant respectfully submits that assuming the compositions in Group I and the methods in Group II are materially different, the search for all of these would occur in the same classes/subclasses given the fact that the compositions in Group I are essentially the same compositions used in the Group II methods. Thus, the same classes/subclasses would be searched because the same compositions are relevant to Group I and Group II claims -- no burden would be placed on the Office in searching and/or examining all claims together. This is particularly true given that Group II method claim 23 depends from claim 1. Thus, according to MPEP 821.04, all of the claims in the pending application can be considered together or, at minimum, claim 23 should be rejoined in the application upon indication of allowable subject matter. For at least all of the above reasons, the Restriction Requirement is traversed.

Furthermore, Applicant has provisionally elected, for initial search and examination purposes only, the species of (1) water dispersed in cyclohexasiloxane (aqueous phase dispersed in a fatty phase); (2) PEG-6 caprylic/capric glyceride (glyceride of a fatty acid); (3) ethanol (monoalcohol); (4) the silicone emulsifier of formula I, particularly the mixture of oxyethylenated/oxypropylenated polydimethylsiloxane 18EO/18PO (see, for example, the

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commercial product DC 5225C) (silicone emulsifier); and (5) caffeine (lipolytic active agent). However, the election of species requirement is traversed.

The reason underlying the designation by the Office of all five identified species is not explained in sufficient detail or by example, and as such represents only a conclusion, particularly in view of the fact that the identified species are related by operation and/or effect. Accordingly, division of these species is unsupported and improper. See, MPEP §§ 802.01 and 806.04 (b).

Moreover, Applicant respectfully submits that even assuming the five identified species are all materially different from each other, the search for all of these types of compounds would occur in substantially the same classes/subclasses. Thus, no burden would be placed on the Office in searching and/or examining all claims together.

For all of the above reasons, the Election of Species Requirement is traversed.

Applicant submits that the present application is ready for examination on the merits.

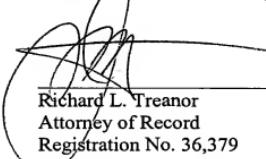
Notice to this effect is earnestly solicited

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Applicant respectfully submits that the above-identified application is now in condition for examination on the merits.

Respectfully submitted,

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